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Disposal



Shipbuilders Council of America

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May 14, 1986

Admiral James D. Watkins
Chief of Naval Operations
Department of Navy
The Pentagon, Room 4E660
Washington, D.C. 20350-2000

Re: Identification of Generator for Shipboard Hazardous Wastes

There is legislation
pending in the House
Armed Services Committee
to force the Navy to take
liability - but it does not
force them to sign as the
generator!

Dear Admiral Watkins:

On December 11, 1985, your staff issued policy guidance to the Commander, Naval Sea Systems Command, requiring private shipyards to bear responsibility for the handling and disposal of hazardous wastes produced aboard Navy vessels. In our view this policy imposes a responsibility which our members cannot properly perform or price in their bids. In addition, this policy may lead to liability which our members are not required by law to bear and against which they may be unable to insure. Moreover, this policy is not consistent with the practices of commercial and other government vessels, and may not serve the long term interests of the Navy.

Over the past several months, working with attorneys from the Office of General Counsel and Naval Sea Systems Command, we have attempted to resolve some of the ambiguities and uncertainties in the application of the Navy's policy. Your staff has been cooperative and courteous. Progress has been made and is continuing. It appears, however, that resolution of our key concerns is constrained by the terms of the December 11 policy. Accordingly, we address those concerns to you.

Shipyard Concerns

At present, Navy ship repair contracts do not specify either the type or amount of hazardous wastes which may be produced and stored aboard ship when a ship enters a private shipyard for repair or overhaul work. Such wastes occasionally include small quantities of solvents, lacquers or acids, but may also include larger quantities of reactive wastes, and even more substantial quantities of bilge water containing oily wastes or other contaminants. Such wastes are ordinarily not labelled as to content or time of generation. Yet Navy policy requires private shipyards to accept control of such wastes and exercise sole responsibility for proper handling and disposal. Obviously, a shipyard which is not informed as to the quantity or type of hazardous wastes cannot include the cost of handling or disposal of such wastes in its bid. Yet, such costs may be substantial.

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adopted a program to minimize its wastes. However, violation of these and other generator duties, which are beyond the capability of shipyards to perform, can subject the shipyard or its employees to personal or corporate liability, including potential criminal liability. Accordingly, it is unreasonable to expect shipyards to perform all of these functions under contract to the Navy without some assurance that liabilities incurred will be indemnified by the Navy.

Navy Liability for Co-Generated Wastes

The concerns expressed above assume that the hazardous wastes in issue are those produced by ship's force or in the course of ship operations, and are clearly and solely Navy responsibilities. There are, however, other categories of wastes for which responsibility is less clear. The RCRA regulations define a generator as any person, by site, whose act or process produces a hazardous waste identified or listed into 40 C.F.R. Part 261 or whose act first causes a hazardous waste to become subject to regulation. 40 C.F.R. §260.10. ^{1/}

Application of this definition is fact-specific and complicated by the additional fact that some wastes can have more than one generator, each of which may be jointly and severally liable under RCRA. In the case of wastes defined as Navy wastes and for the Navy portion of mixed wastes, the Navy policy provides for a recognition of its liability. However, Navy policy provides in Paragraph 4.a of Attachment 1, that "for wastes generated as a result of work performed by a contractor, the contractor bears sole legal responsibility for proper management of wastes generated in the course of the contractor's activities. It should be noted that material which becomes HW (hazardous waste) during the course of contractor work, should be considered contractor-generated HW." This is an overly restrictive interpretation of RCRA which may result in potential increased liability for shipyards.

Although shipyards generally prefer to exercise control over wastes which they have produced in the course of work on Navy vessels to insure proper handling and disposal, such control does not necessarily relieve the Navy of all legal responsibility. Wastes produced at the express or implied direction of the Navy in the course of ship repair work may be Navy-generated as well as contractor-generated since the Navy contract requirement may also be an "act or process" which results in the production of a hazardous waste. In that case, the Navy would be unable to divest itself of liability for such wastes. In today's constrained liability insurance market, it is simply unrealistic to assume that private yards will be able to insure against these risks. The insurance which is available is often either inadequate in scope or prohibitively expensive to bear.

Conclusion

The Navy policy which requires private shipyards to act as the generator for the disposal of shipboard hazardous wastes for ships undergoing repair or overhaul at such facilities is unworkable and unfair. Shipyards do not have sufficient information to

^{1/} EPA recognizes that a ship is a "site" at which certain wastes are first produced, thus making the Navy a generator of such wastes. Both Coast Guard and commercial ship operators have applied for and received EPA identification numbers for vessels within their jurisdiction.